Supreme Court, U.S.
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No. 98-1528

IN THE

Supreme Court of the United States

DENNIS GEORGE,

Petitioner,

v.

MARK ABBOTT,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit

RESPONDENT'S BRIEF IN OPPOSITION

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RESTATEMENT OF QUESTIONS PRESENTED

A. Does a police officer who relies on a motor vehicle certificate of title and vehicle registration have qualified immunity if, in reliance on that certificate, he participates in taking the vehicle away from someone in lawful possession?

B. Does the Pennsylvania Motor Vehicle Registration statute satisfy the requirement of procedural due process established by this Court in *Fuentes*?

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Mathews v. Eldridge, 424 U.S. 319, 47 L. Ed. 18, 96 S. Ct. 893 (1976) 5, 6

Statute:

Pennsylvania's Act of 1923, P.L. 425, as amended, Act of June 17, 1976, P.L. 162, 75 Pa. C.S.A. § 1101 5

Respondent respectfully requests that Petitioner's Petition for Writ of Certiorari to review the decision of the United States Court of Appeals for the Third Circuit be denied.

COUNTERSTATEMENT OF THE CASE

While the chronology set forth in Petitioner's Statement of the Case is reasonably accurate, the Statement nonetheless contains serious misstatements of fact.

Petitioner asserts that Respondent titled the vehicle in the name of his then father-in-law, Dale Feathers, in order to defraud the Bankruptcy Court and various creditors. This assertion, taken from the deposition transcript of Laurie Latshaw, Third Circuit Appendix (TCA), page 413, simply ignores the testimony of Dr. Abbott himself (TCA, page 341) that the arrangement was set up because the Abbotts had filed for bankruptcy and thus had insufficient credit to obtain a car loan in their own name (TCA, page 348).[1] Other than the self-serving and unsubstantiated testimony of Laurie Latshaw, there is no evidence of any kind that anyone was defrauded by this arrangement.

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1. Petitioner has a habit throughout his Statement of the Case of either including statements that are not part of the record below or using one-sided, self-serving testimony and presenting it as uncontroverted fact. For instance, there is nothing in the record concerning the disposition of Attorney Millstein's disorderly conduct charge, yet Petitioner includes that information and couches it in such a manner as to reflect negatively on Respondent.

REASONS FOR DENYING THE WRIT

I.

THE PETITION FAILS TO PRESENT ANY COMPELLING REASON TO GRANT REVIEW

A. Does A Police Officer Who Relies On A Motor Vehicle Certificate Of Title And Vehicle Registration Have Qualified Immunity If, In Reliance On That Certificate, He Participates In Taking The Vehicle Away From Someone In Lawful Possession?

The law concerning the issue of qualified immunity is well-settled. This Court has held that qualified immunity is available to state actors performing discretionary functions to shield them from liability where "their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982) (citations omitted). In *Harlow*, this Court went on to state that in deciding the issue of qualified immunity on a motion for summary judgment, the judge must determine "not only the currently applicable law, but whether that law was clearly established at the time an action occurred." *Id.* at 818. The Court held that "[i]f the law was clearly established, the immunity defense should fail, since a reasonably competent public official should know the law governing his conduct." *Id.* at 818-819.

Twenty-four years prior to the date of the incident involved in this lawsuit, this Court held that an individual in lawful possession of property was entitled to procedural

due process before being deprived of his possessory interest in the property. *Fuentes v. Shevin*, 407 U.S. 67 (1972). There is no dispute that Respondent was in lawful possession of the vehicle on April 25, 1996. Based on the rational of the *Harlow* decision, since the applicable law was clearly established, Petitioner should not be afforded the protection of qualified immunity.

Petitioner argues that his reliance on the state administrative procedures concerning certificates of titles for vehicles and the vehicle registration in determining that Latshaw was entitled to immediate possession of the vehicle was objectively reasonable, and should therefore be granted qualified immunity. This argument must fail. First, this was a civil dispute. On April 25, 1996, Respondent was in lawful possession of the vehicle. It had not been reported stolen, there was no criminal activity involved in Abbott's possession of the vehicle. As such, Petitioner simply had no authority to act at all. Given that fact, Petitioner should not be permitted to now claim his actions are shielded by qualified immunity.

Compare the facts of this matter to a situation where a vehicle is stolen and recovered by the police. The police check the certificate of title and verify the vehicle's registration. The police then return the vehicle to the individual identified on the vehicle registration, who is not the person that was in lawful possession of the vehicle at the time it was stolen. In that instance, the police would be afforded qualified immunity. The difference is that in the hypothetical, the police had authority by the nature of the incident and had no duty to investigate beyond checking the vehicle registration to determine to person entitled to possession. But in the case at hand, not only did the

Petitioner have no authority to act, he was also confronted with conflicting information regarding the ownership status of the vehicle by several people. At that point, with conflicting information being presented, Petitioner decided that Latshaw was entitled to immediate possession of the vehicle. That is precisely the situation that *Fuentes* was intended to eliminate by holding that the party in possession is entitled to procedural due process before being deprived of possession.

Second, as is more fully discussed in Respondent's next issue, the Pennsylvania Motor Vehicle Registration statute does not satisfy the requirements of procedural due process. The clearly established law of *Fuentes* mandates that someone in lawful possession of property must be afforded procedural due process before being deprived of that interest in property. Mere reliance on a state vehicle registration statute cannot overcome the fact that for 24 years the law has required procedural due process in this type of situation. The Third Circuit correctly held that Petitioner overstates the importance of the documentation provided by Latshaw on April 25, 1996 because no matter what documentation she provided, Abbott was in lawful possession and *Fuentes* controls. Petitioner seems to imply that this Court's ruling in *Fuentes* is somehow superseded by the Pennsylvania Motor Vehicle Registration statute. That is simply not true.

B. Does The Pennsylvania Motor Vehicle Registration Statute Satisfy The Requirement Of Procedural Due Process Established By This Court In *Fuentes*?

In seeking certiorari from this Court, Petitioner apparently believes that this case presents an important question of federal law that should be decided by this court.

Although not stating it directly, Petitioner apparently believes that due process requirement of *Fuentes* is achieved by Pennsylvania's Act of 1923, P.L. 425, as amended,[2] regarding the registration of automobile titles, and that this title registration statute meets the definition of due process delineated by the *Mathews*[3] case.

Adapting this argument to the specific facts of this case, Petitioner asserts that his reliance on the certificate of title presented by Latshaw at the scene of the dispute, following as it did on the heels of the fraudulent registration of the automobile title by Latshaw pursuant to the provisions of the Pennsylvania statute, is nonetheless all the due process Respondent is entitled to before he is deprived of his lawful possessory interest in the vehicle.

Even a cursory reading of *Mathews* reveals that whatever procedure is used to satisfy the requirements of due process it must include some form of notice and hearing prior to deprivation of a protected property interest. For instance, in *Mathews*, there was in place a Social Security administrative procedure which could have been utilized prior to the termination of Appellant's social security payments. Appellant chose to ignore that procedure and proceeded directly to file a suit in Federal court claiming he was denied a full scale evidentiary hearing prior to the loss of his benefits.

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2. The statute relied upon by Petitioner has been long since replaced by the Act of June 17, 1976, P.L. 162, 75 Pa. C.S.A. § 1101.

3. *Mathews v. Eldridge*, 424 U.S. 319, 47 L. Ed. 18, 96 S. Ct. 893 (1976).

Writing for the majority, Justice Powell said as follows:

> The judicial model of an evidentiary hearing is neither a required, nor even the most effective, method of decision making in all circumstances. The essence of due process is the requirement that "a person in jeopardy of serious loss (be given) notice of the case against him and the opportunity to meet it."

424 U.S. at 348 (citations omitted).

In order then for the Pennsylvania statute regarding the registration of motor vehicle titles to comply with the dictates of *Mathews*, there would have to be in place some notice and hearing provision affording Respondent some means to challenge the registration of the title in the name of his ex-wife, Laurie Latshaw. There is none.

Petitioner argues that Respondent had the chance to register title in his own name and because he had that chance and chose not to do it, he now cannot be heard to complain of the ensuing problems.[4]

Petitioner's argument in this regard is faulty. In addition to being a complete mischaracterization of the true facts, it completely ducks the primary issue regarding notice and

4. At this point in his argument (Petition, Page 19) Petitioner again asserts that Respondent's decision to place the title in the name of Dale Feathers, his then father-in-law, was an attempt to defraud creditors. Again Respondent points out that Petitioner fails to establish that anyone was defrauded. As Respondent had testified, it was done solely to obtain the financing credit that he and his wife could not obtain because they had filed for bankruptcy.

hearing. The vehicle had been titled in the name of Dale Feathers. Respondent held a bill of sale for the purchase of the vehicle. Dale Feathers, instead of transferring title to Respondent when the loan was paid off, transferred title to his daughter.

The title registration statute has no notice provision in it. Respondent had no notice that the vehicle title was transferred to his ex-wife. The title registration statute has no hearing provisions. Even if Respondent had notice that title was now in the name of his ex-wife, there was no hearing procedure available for him to challenge it. In the total absence of any provisions for notice and hearing prior to the loss of a possessory interest, by what means can it be asserted that Respondent received procedural due process? The answer to that is simple. No means exist.

It further begs the question of Petitioner's role in the decision making process. Even if by some means the Pennsylvania statute could be construed as affording Respondent due process, it is still not the Petitioner's job, as a policeman, to intrude into what is clearly a civil dispute. Petitioner should have left this essentially civil matter to the judicial system for resolution.[5] That is the teaching of

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5. As the Third Circuit noted in its opinion, exigent circumstances sometimes permit deviation from normal due process expectations, such as if there is a special need for very prompt action. Such special need may possibly include the imminent removal of goods from the jurisdiction of the state. Interestingly enough, inasmuch as all participants knew Laurie Latshaw intended to at once remove the vehicle from Pennsylvania and drive it back to her residence in Ohio, it would seem more probable that Petitioner could have more appropriately intervened on behalf of Respondent to prevent such removal.

Fuentes, *supra*, and it was based primarily upon that ruling that the Third Circuit decided this case the way it did.

As the Third Circuit in its opinion noted,

> At the heart of Fuentes is the principle that it is not for law enforcement officers to decide who is entitled to possession of property. Rather, it is the domain of the courts, and citizens are to have a meaningful opportunity to be heard as to their rights before they are finally deprived of possession of property.

164 F.3d at 148.

Petitioner is free to draw whatever conclusion he wishes regarding the right to possession. He is free to conclude that by virtue of the documentation possessed by Laurie Latshaw she is entitled to immediate possession of the vehicle. He is free to conclude that Respondent has no right to possession of the vehicle. However, he is not free to act on those beliefs. In the absence of appropriate exigent circumstances, he is not free to be judge and jury. To hold otherwise would make *Fuentes* meaningless.

CONCLUSION

For the foregoing reasons, the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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